

**For discussion
on 14 March 2006**

LegCo Panel on Food Safety and Environmental Hygiene

Demerit Points System for Licensed Food Premises

PURPOSE

This paper briefs Members on the proposals to revamp the Demerit Points System (DPS) for licensed food premises.

BACKGROUND

2. The Food and Environmental Hygiene Department (FEHD) has been operating a DPS in respect of licensed food premises, which aims to deter food business operators from breaching legislative provisions on food safety and environmental hygiene under the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislations. Under the DPS –

- (a) a number of demerit points of 15, 10 and 5 respectively (depending on the nature and severity of the offence) will be registered against a licensee on conviction of an offence;
- (b) the prescribed demerit points for a particular offence will be doubled and trebled respectively if the same offence is committed for the second and the third time within a period of 12 months;
- (c) a licence will be suspended for 7 days if 15 demerit points are accumulated within a period of 12 months (first suspension);
- (d) the licence will be suspended for 14 days if another 15 demerit points are accumulated within a period of 12 months from the date of the last offence leading to the first suspension (second suspension); and
- (e) the licence will be cancelled if another 15 demerit points are accumulated within a period of 12 months from the date of the last offence leading to the second suspension.

3. Team Clean's "Report on Measures to Improve Environmental Hygiene in Hong Kong" published in August 2003 recommends that FEHD should critically review the existing DPS, both in terms of its overall mechanism and the number of demerit points assigned to individual offences, to enhance its effectiveness. In particular, it is proposed that the DPS should be revamped to provide for a 21-day suspension of licence on accumulating the requisite number of points for the first time, and cancellation of licence for the second time.

PROPOSALS

4. In reviewing the DPS for licensed food premises, the following factors have been taken into account –

- (a) *demerit points reflecting degree of food safety/public hygiene risks*: at present, the number of demerit points some offences carry do not reflect the degree of risks associated. For example, the same demerit points are accorded to knowingly suffering or permitting the presence of rats or insects in the premises and placing furniture/equipment which obstructs cleaning;
- (b) *penalty reflecting severity of offences*: under the existing mechanism, the doubling and trebling of demerit points for repeated convictions may result in the same sanction against a licensee who has committed a minor offence twice and a licensee who has committed a serious offence plus a minor offence. This is because demerit points registered against a licensee under the present doubling and trebling system may not reflect the severity of the offences committed; and
- (c) *changes in legislation*: the DPS schedule was last updated in July 2001. Legislative amendments introduced thereafter are not reflected in the current DPS, e.g. amendments to the Food Business Regulation on the control of avian influenza.

5. Having taken into account the recommendations of Team Clean in paragraph 3 and considerations in paragraph 4, we plan to introduce the following changes to the DPS for licensed food premises to streamline the mechanism and enhance its effectiveness –

- (a) offences will be classified into four groups (each with corresponding demerit points of 15, 10, 5 and 3) to better

reflect the degree of food safety/public hygiene risks posed by each of these offences. More demerit points will be accorded to offences that carry high food safety/public hygiene risks, e.g. sale of milk imported from or frozen confections obtained from unapproved source of manufacture. Demerit points accorded to offences with less food safety/public hygiene risks will be reduced, e.g. unauthorized minor alteration to the approved layout plan. The proposed schedule of demerit points assigned to individual offences is at the Annex;

- (b) repeated convictions, however, will no longer result in doubling or trebling of demerit points in order to simplify the existing DPS mechanism;
- (c) the DPS schedule will be updated with new offences added;
- (d) similar to the existing DPS, the accumulation of 15 demerit points within a period of 12 months will result in suspension of a licence. To enhance deterrence, the suspension period will be extended from 7 to 21 days as recommended by Team Clean; and
- (e) in line with Team Clean's recommendation, there will no longer be any second suspension. If another 15 demerit points are accumulated within 12 months from the date of the offence leading to the licence suspension, the licence will be cancelled.

WAY FORWARD

6. We will consult the food trade on the proposals. We will take into consideration the views of Members and the trade when finalising the proposals for implementation.

ADVICE SOUGHT

7. Members are invited to comment on the proposals in paragraph 5 above.

Health, Welfare and Food Bureau
Food and Environmental Hygiene Department
March 2006

Proposed Schedule of Demerit Points

Annex

Group A: Offences which attract 15 points

Offence which attracts 15 points	Fine and other penalty under the law
<u>Public Health and Municipal Services Ordinance (Cap. 132)</u>	
(1) Sale of food rendered injurious to health by adulteration (Section 50)	Level 3 + 3 months' imprisonment
(2) Sale of adulterated milk (Section 51)	Ditto
(3) Sale of meat adulterated with water or other fluid (Section 51A)	Ditto
(4) Sale of food unfit for human consumption (Section 54)	Level 5 + 6 months' imprisonment
(5) Sale of or interference with seized or detained food (Section 59(3))	Ditto
<u>Food Business Regulation (Cap. 132 sub. leg. X)</u>	
(1) Giving out food for preparation in domestic premises (Section 7)	Level 3 + 3 months' imprisonment + daily fine \$300
(2) Employment of persons not properly immunized against certain diseases (Section 23A)	Ditto
(3) Employment of persons likely to spread disease (Section 24)	Ditto
(4) Sale of the following item of prohibited food (Section 29 and Schedule 1):	
(a) Chinese dishes of Yu Sang (魚生);	Level 5 + 6 months' imprisonment + daily fine \$900
(b) Shell fish which have been collected in contravention of section 28 of this Regulation.	Ditto
(5) Sale of live water bird and other live poultry in the same premises (Section 30A)	Ditto
(6) Sale of live quails with other live poultry in the same premises (Section 30B)	Level 4

Proposed Schedule of Demerit Points

Offence which attracts 15 points	Fine and other penalty under the law
<u>Frozen Confections Regulation (Cap. 132 sub. leg. AC)</u>	
(1) Sale of frozen confections obtained from unapproved source of manufacture (Section 7(1))	Level 3 + 3 months' imprisonment + daily fine \$300
(2) Using water from an unapproved source and non-permitted ingredients for the purpose of manufacturing frozen confections (Section 23)	Ditto
(3) Employment of persons likely to spread diseases (Section 35)	Ditto
(4) Employment of persons not properly immunized against certain diseases (Section 36)	Ditto
(5) Failing to comply with any direction given to stop supply of frozen confections to the danger of public health (Section 38)	Ditto
<u>Milk Regulation (Cap. 132 sub. leg. AQ)</u>	
(1) Sale of milk imported from unapproved source of manufacture (Section 5A)	Level 3 + 3 months' imprisonment + daily fine \$300
(2) Distribution of contaminated or adulterated milk (Section 18)	Ditto
(3) Unauthorized heat-treatment of milk produced outside Hong Kong (Section 20)	Ditto
(4) Using ingredients from unapproved sources for re-constitution of milk (Section 21)	Ditto
(5) Processing milk from unlicensed dairies (Section 21A)	Ditto
(6) Employment of persons likely to spread diseases (Section 35)	Ditto
(7) Employment of persons not properly immunized against certain diseases (Section 36)	Ditto
(8) Failing to comply with any direction given to stop supply of milk to the danger of public health (Section 37)	Ditto

Proposed Schedule of Demerit Points

Group B: Offences which attract 10 points

Offence which attracts 10 points	Fine and other penalty under the law
<u>Public Health and Municipal Services Ordinance (Cap. 132)</u>	
(1) Sale of food not of the substance, nature or quality demanded by the purchaser (Section 52)	Level 3 + 3 months' imprisonment
(2) False labelling and advertisement of food (Section 61)	Level 5 + 6 months' imprisonment
(3) Failing to comply with any demand or requisition by an authorized public officer to take sample for analysis, bacteriological or other examinations (Section 62)	Level 2
<u>Food Business Regulation (Cap. 132 sub. leg. X)</u>	
(1) Knowingly suffering or permitting the presence of rats or insects on the premises and the presence of live birds or animals in food room (Section 5(3))	Level 3 + 3 months' imprisonment + daily fine \$300
(2) Storing non-permitted colouring matter for use in food on food premises (Section 7A)	Ditto
(3) Keeping live fish or shell fish in water of a quality below standard (Section 10A(1))	Ditto
(4) Sale of restricted food without permission (Section 30(1))	Level 5+ 6 months' imprisonment + daily fine \$900
(5) Sale/delivery of water bird carcasses without proper packing (Section 30(1A), (1C))	Level 4
(6) Sale/delivery of water bird offal without proper packing (Section 30(1E), (1G))	Ditto
(7) Opening/tampering of the sealed container of offal of water bird (Section 30C)	Ditto
(8) Operating unlicensed food business (Section 31(1))	Level 5 + 6 months' imprisonment + daily fine \$900
(9) Unauthorized alteration(s) or addition(s) in respect of the premises to which the licence relates resulting in material deviation from the plan approved under section 32 (Section 34(a))	Level 3 + 3 months' imprisonment + daily fine \$300

Proposed Schedule of Demerit Points

Offence which attracts 10 points	Fine and other penalty under the law
(10) Unauthorized alteration(s) to matters as specified in the licensing conditions (Section 34(b))	Ditto
(11) Unauthorized extension of food business outside the licensed area (Section 34C)	Ditto
<u>Frozen Confections Regulation (Cap. 132 sub. leg. AC)</u>	
(1) Sale of frozen confections without permission (Section 5)	Level 5 + 6 months' imprisonment + daily fine \$900
(2) Sale of frozen confections which do not comply with bacteriological standard (Section 6)	Level 3 + 3 months' imprisonment + daily fine \$300
(3) Sale of frozen confections which have not been heat-treated (Section 8)	Ditto
(4) Keeping frozen confections for sale at temperature exceeding -2°C (Section 10)	Ditto
(5) Failing to keep ice cream cones and wafers in dust proof containers (Section 14)	Ditto
(6) Effecting unauthorized alteration of premises (Section 20)	Ditto
(7) Failing to prevent vermin in a frozen confections factory (Section 30)	Ditto
(8) Using open space for manufacture or storage of frozen confections (Section 31)	Ditto
<u>Milk Regulation (Cap. 132 sub. leg. AQ)</u>	
(1) Sale of milk without permission (Section 5)	Level 5 + 6 months' imprisonment + daily fine \$900
(2) Sale of milk which does not comply with bacteriological standard (Section 6)	Level 3 + 3 months' imprisonment + daily fine \$300
(3) Sale of milk which has not been heat-treated (Section 7)	Ditto
(4) Sale of cream with added ingredient other than thickening substance (Section 8)	Ditto

Proposed Schedule of Demerit Points

Offence which attracts 10 points	Fine and other penalty under the law
(5) Sale of milk in an unapproved type of containers (Section 9)	Ditto
(6) Sale of beverages resembling milk in an unapproved container (Section 11)	Ditto
(7) Keeping milk for sale exceeding 10°C (Section 13)	Ditto
(8) Effecting unauthorized alteration of premises (Section 17)	Ditto
(9) Using vessels/containers the material/design of which have not been approved (Section 23)	Ditto
(10) Failing to prevent vermin in a milk factory (Section 31)	Ditto
(11) Using open space for processing or for storage of milk (Section 32)	Ditto
<u>Miscellaneous Subsidiary Legislation under Cap. 132</u>	
(1) Regulation 3, 4, 5(1) or 5(3) of the Colouring Matter in Food Regulations (Cap 132 sub. leg. H)	Level 5 + 6 months' imprisonment + \$300 daily fine
(2) Regulation 3(1) or 3(2) of the Sweeteners in Food Regulations (Cap 132 sub. leg. U)	Level 5 + 6 months' imprisonment
(3) Regulation 3(1)(a), (b) or (c) of Food Adulteration (Metallic Contamination) Regulations (Cap 132 sub. leg. V)	Ditto
(4) Regulation 5 of the Food and Drugs (Composition and Labelling) Regulations (Cap 132 sub. leg. W)	Ditto
(5) Regulation 3 or 3A of the Harmful Substances in Food Regulations (Cap 132 sub. leg. AF)	Ditto
(6) Regulation 3 of the Mineral Oil in Food Regulations (Cap 132 sub. leg. AR)	Ditto
(7) Regulation 3, 4, 5 or 6 of the Preservatives in Food Regulations (Cap 132 sub. leg. BD)	Ditto

Proposed Schedule of Demerit Points

Group C: Offences which attract 5 points

Offence which attracts 5 points	Fine and other penalty under the law
<u>Food Business Regulation (Cap. 132 sub. leg. X)</u>	
(1) Failing to maintain premises (including toilets) clean (Section 5(1))	Level 3 + 3 months' imprisonment + daily fine \$300
(2) Failing to heed of notice to cleanse, disinfest, or repair food premises (Section 5(5))	Ditto
(3) Failing to maintain equipment, utensils clean (Section 6)	Ditto
(4) Using food room for dwelling purpose or using dwelling place as a food room (Section 8)	Ditto
(5) Failing to maintain spittle receptacles in the proper manner and to display no spitting notices (Section 9)	Ditto
(6) Failing to protect food from risk of contamination (Section 10)	Ditto
(7) Knowingly suffer or permit the presence of dog on food premises (Section 10B(2))	Ditto
(8) Failing to store open food in proper manner (Section 11)	Ditto
(9) Failing to transport open food in proper manner (Section 12)	Ditto
(10) Transporting dressed poultry carcass or offal not in the approved type of vehicle (Section 12A(1))	Ditto
(11) Using open space for preparation of food/storage or washing of utensils (Section 13)	Ditto
(12) Failing to maintain food room clean/in good repair (Section 15)	Ditto
(13) Failing to maintain any sanitary fitment clean and in good repair (Section 15A)	Ditto
(14) Allowing the accumulation of refuse in food rooms (Section 16)	Ditto

Proposed Schedule of Demerit Points

Offence which attracts 5 points	Fine and other penalty under the law
(15) Failing to render the surface of food preparation tables, etc. impervious (Section 17)	Ditto
(16) Failing to sterilize/store eating utensils properly (Section 19)	Ditto
(17) Failing to sterilize wet towels before serving to customers (Section 20)	Ditto
(18) Failing to prevent contamination of food by contact with clothing (Section 21)	Ditto
<u>Frozen Confections Regulation (Cap. 132 sub. leg. AC)</u>	
(1) Failing to take precautions against contamination of frozen confections pending sale (Section 9)	Level 3 + 3 months' imprisonment + daily fine \$300
(2) Storing frozen confections with other articles in the same refrigerator (Section 11)	Ditto
(3) Failing to keep refrigerators for the storage of frozen confections clean (Section 12)	Ditto
(4) Failing to keep utensils clean (Section 13)	Ditto
(5) Failing to comply with requirements relating to heat-treatment apparatus (Section 21)	Ditto
(6) Failing to maintain premises/equipment clean (Section 24)	Ditto
(7) Failing to sterilize vessels/utensils properly (Section 25)	Ditto
(8) Failing to prevent contamination of frozen confections by contact with clothing (Section 28)	Ditto
(9) Using frozen confections factory for dwelling purposes (Section 27)	Ditto
(10) Failing to maintain spittle receptacles in the proper manner and to display no spitting notices (Section 29)	Ditto

Proposed Schedule of Demerit Points

Offence which attracts 5 points	Fine and other penalty under the law
(11) Failing to cleanse water tanks (Section 32)	Ditto
(12) Failing to take precautions against contamination of frozen confections during manufacture and distribution (Section 33)	Ditto
(13) Failing to mark containers of soft ice cream with the date and time of manufacture (Section 34)	Ditto
<u>Hawker Regulation (Cap. 132 sub. leg. AI)</u>	
(1) Failing to maintain equipment in safe and clean condition (Section 50)	-
(2) Failing to ensure stall, equipment and food/drink to be provided by licensees dealing in drink or cooked food to be kept in clean and hygienic condition (Section 52)	Level 2 + daily fine \$100
<u>Milk Regulation (Cap. 132 sub. leg. AQ)</u>	
(1) Failing to take precautions against contamination of milk pending sale (Section 12)	Level 3 + 3 months' imprisonment + daily fine \$300
(2) Failing to take precautions against contamination of milk in the course of transportation (Section 13A)	Ditto
(3) Failing to comply with requirements relating to heat-treatment apparatus (Section 19)	Ditto
(4) Failing to maintain premises/equipment clean (Section 22)	Ditto
(5) Failing to sterilize vessels/utensils properly (Section 24)	Ditto
(6) Allowing utensils used in the processing of milk to be used for drinking (Section 25)	Ditto
(7) Using milk factory for dwelling purposes (Section 27)	Ditto
(8) Failing to prevent contamination of milk by contact with clothing (Section 28)	Ditto

Proposed Schedule of Demerit Points

Offence which attracts 5 points	Fine and other penalty under the law
(9) Failing to maintain spittle receptacles in the proper manner and to display no spitting notices (Section 29)	Ditto
(10) Failing to cleanse water tanks (Section 33)	Ditto
(11) Failing to take precautions against contamination of milk during processing/distribution (Section 34)	Ditto
<u>Public Cleansing and Prevention of Nuisances Regulation</u> <u>(Cap. 132 sub. leg. BK)</u>	
(1) Dumping of litter and waste (including wastewater in public places) by licensees or nominated managers in the course of food business (Section 4(1))	Level 4 + 6 months' imprisonment <i>OR</i> Fixed penalty of \$1,500

Proposed Schedule of Demerit Points

Group D: Offences which attract 3 points

Offence which attracts 3 points	Fine and other penalty under the law
<u>Food Business Regulation (Cap. 132 sub. leg. X)</u>	
(1) Placing furniture/equipment as to obstruct cleaning (Section 5(2))	Level 3 + 3 months' imprisonment + \$300 daily fine
(2) Failing to keep bottled drinks in wet refrigerator or immersion cooler properly (Section 14)	Ditto
(3) Selling horse flesh which has not been properly labelled (Section 27)	Ditto
(4) Unauthorized alteration(s) of any part of heating equipment or any change in the type of fuel used therein (Section 34(c))	Ditto
(5) Unauthorized alteration(s) or addition(s) to the matters already specified in the plan approved under section 32 of this Regulation (Section 34D(1))	Ditto
(6) Unauthorized addition of space(s) to be used for such purpose(s) as prescribed in section 32 of this Regulation within the licensed premises but the said unauthorized addition of space(s) is not originally specified in the approved plan (Section 34D(2)(a))	Ditto
(7) Unauthorized addition of matter(s) of the kind as particularized in section 32 of this Regulation within the licensed premises but the said unauthorized addition of matter(s) is not originally specified in the approved plan (Section 34D(2)(b))	Ditto
<u>Hawker Regulation (Cap. 132 sub. leg. AI)</u>	
(1) Failing to maintain the fixed pitch and the adjacent area clean (Section 39(2))	Level 2 + daily fine \$100
(2) Failing to provide sufficient number of refuse bins and to use them properly (Section 51)	Ditto

Proposed Schedule of Demerit Points

Offence which attracts 3 points	Fine and other penalty under the law
<p>Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK)</p> <p>(1) Failing to comply with a notice to keep surroundings clean (Section 5(1))</p> <p>(2) Failing to provide a sufficient number of dustbins (Section 19)</p>	<p>1st conviction: level 2 Subsequent convictions: Level 3</p> <p>Ditto</p>

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